

## **EXHIBIT 1**

Jeremy Michael Eaves

May 10, 2021

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IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON

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JOSEPH J. HESKETH III, on )  
his behalf and on behalf )  
of other similarly )  
situated persons, )  
                            )  
                            Plaintiff, )  
                            )  
                           vs.                 )     No. 2:20-cv-01733-JLR  
                            )  
TOTAL RENAL CARE, INC., on )  
its own behalf and on )  
behalf of other similarly )  
situated persons, )  
                            )  
                            Defendants. )

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30 (b) (6) DEPOSITION UPON ORAL EXAMINATION

OF

JEREMY MICHAEL EAVES

Conducted via Zoom

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ATTENDANCE OF ALL PARTICIPANTS VIA ZOOM VIDEO CONFERENCE

---

DATE: May 10, 2021

REPORTED BY: Olivia Pennella

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1 A P P E A R A N C E S

2

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11 ALSO PRESENT:

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13 COLLEEN LUDWIG (DAVITA)

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1 Monday, May 10, 2021

2 12:10 p.m. PDT

*...and the rest of the world.*

4 THE COURT REPORTER: We are on the record.  
5 MS. PETERSEN: Thank you. This is Chelsea  
6 Peterson for defendant, Total Penal Care.

7 MS. HENRY: If you'll wait for a moment,  
8 Chelsea. As I mentioned, we are about to come on to the  
9 thing. So just give us one minute, please.

10 MS. PETERSEN: Okay. I'm simply introducing  
11 myself --

12 MS. HENRY: Thank you.

13 MS. PETERSEN: -- and indicating that we are  
14 here and ready to begin the deposition.

15 MS. HENRY: And I understood that. As I said,  
16 I'm trying -- I will be on in a minute. I'm almost off  
17 the phone. Just a minute.

18 MS. PETERSEN: Thank you. We can go off the  
19 record.

20 (Recess taken from 12:10 p.m. to 12:48 p.m.)

21 JEREMY MICHAEL EAVES, witness herein, having been duly  
22 sworn by the Certified Court  
23 Reporter, testified as follows:

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E X A M I N A T I O N

2 BY MR. JONES:

3 Q. Mr. Eaves, I'm Craig Jones. And I appreciate  
4 your patience. Quite often in corporate depositions,  
5 things drag early on. And we'll try not to take up any  
6 more of your time than is necessary.

7 Now, I'm going to start with the first  
8 question. It's the one that you always hear in your  
9 lawyer programs. I'm going to ask you to state your  
10 full name, please.

11 A. Sure. Jeremy Michael Eaves.

12 Q. Mr. Eaves, where do you live?

13 A. I live in Broomfield, Colorado.

14 Q. How far is that from Denver?

15 A. I would say about 18 miles from door to  
16 office.

17 Q. Where are you right now located, physically?

18 A. I'm in my home office in Broomfield, Colorado.

19 Q. Okay. I'd like you to -- well, first of all,  
20 let me tell you how I'm going to take the deposition.  
21 This is a corporate deposition of DaVita. Are you aware  
22 of that?

23 A. I am.

24 Q. Have you ever given a deposition before?

25 A. I have.

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1 through this -- if you will go through and look at  
2 section, I believe it's designated, four -- I just have  
3 a cheat sheet. I don't have a copy of the exact  
4 subpoena. I just have all that's been put down kind of  
5 in block form for me.

6 But do you see where it says, "Documents  
7 Request -- or Requested"?

8 A. Yeah. And --

9 THE WITNESS: And, Ms. Henry, maybe you can  
10 help me -- just so I can look at this a little larger on  
11 the document I've received -- would the footer on  
12 this be "3rd Amended Schedule A to Subpoena - 10"?

13 MS. HENRY: Yes. And I have it on the screen  
14 for you, also.

15 THE WITNESS: It's a little small, but I'm  
16 happy to navigate.

17 MS. HENRY: I can make it a little bigger, if  
18 you'd like. But it's page 10 of the Schedule A attached  
19 to the subpoena.

20 A. Yes, Mr. Jones, I see "Documents Requested."

21 Q. (By Mr. Jones) Are you here today to produce  
22 these documents on behalf of DaVita?

23 A. Can you help me understand what you mean by  
24 "produce"?

25 Q. Well, those -- we've been provided -- in the

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1 age of COVID-19, we do things remotely. And in the old  
2 days, we used to stroll up into a conference room. And  
3 the corporate representative would drag out boxes of  
4 documents that probably have been produced ahead of  
5 time.

6 And we would go through each item and say,  
7 "Okay. Which item are you producing in response to  
8 this?" But Counsel has provided us a link, where we  
9 were able to download in excess of 7,000 documents  
10 today.

11 And my question to you, sir, is that: Are you  
12 here prepared to produce these 7,617 documents that's  
13 numbered by, I suppose, Counsel? Or is there someone  
14 else who's going to show up and say, "Hey, I'm going to  
15 produce the documents today"?

16 A. I think what I would say is, I'm -- I'm  
17 prepared -- again, a quick glance -- to speak to all of  
18 these. So I don't want to get hung up on the word  
19 "produce," but I think I'm prepared to --

20 Q. Yeah.

21 A. -- speak to all of these, yes.

22 Q. Yeah, I know that's a -- it's a technical  
23 jargon because, you know, it's been produced  
24 electronically -- or remotely, I should say; right?

25 Okay. I think that was a clear answer. Thank

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1    lines?

2            Q.    Well, yeah. The employees are supposed to get  
3    an answer to their question 100 percent of the time,  
4    true?

5            A.    Sure. The -- the expectation would be that  
6    teammates who operate those inboxes are responding to  
7    teammate questions, yes.

8            Q.    And if those questions coming from teammates  
9    are directed like to a particular policy or procedure,  
10   that may raise a red flag for leadership; isn't that  
11   right?

12          A.    I do think that's possible, Mr. Jones.

13          Q.    Not only possible. It happened with the  
14   Disaster Relief Policy in March of 2020, didn't it?

15          A.    What was the question?

16          MR. JONES: Read it back, please.

17          (Record as shown on page 87, lines 8 through  
18                11, read back.)

19          A.    I believe I answered that question.

20          MR. JONES: Read my next question, please.

21          (Record as shown on page 87, lines 13 and 14,  
22                read back.)

23          A.    There were questions about the Disaster Relief  
24   Policy, yes. We had many questions about COVID in  
25   general during that time frame, yes.

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1 I'm -- I'm happy to do so.

2 Q. Yeah, I've forgotten what it is. What is the  
3 question?

4 A. I think your question was why we had made  
5 efforts to clarify the policy.

6 Q. Well, let me ask you this. We'll start over  
7 on it. Okay?

8 Do you think that this policy was clear on  
9 January 1, 2020?

10 A. Yes.

11 Q. You didn't think that it needed any  
12 clarification on January 1, 2020?

13 A. No.

14 Q. Did you feel that the policy needed  
15 clarification after March -- some time after March 15,  
16 2020?

17 A. We -- we did make a decision to put specific  
18 language in the policy, yes. To answer your question, I  
19 did feel it necessary, speaking on behalf of DaVita.

20 Q. Now, what changed DaVita's mind then from --  
21 going on January 1, 2020, believing that their policy  
22 was clear and then something happened on March 15, which  
23 is barely 45 days later, that DaVita felt they had to  
24 amend their policy and clarify it?

25 What happened?

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1 I'm doing it so you can see the Bates number. And then  
2 I'd like to make it bigger, if you're all right with it.

3 Q. (By Mr. Jones) Can you read it?

4 THE WITNESS: Thank you, Christina. I'm  
5 prepared for you to make it bigger now. Thank you.

6 Q. (By Mr. Jones) All right. This is  
7 DaVita\_003376. It's one of about 7,600 documents that  
8 were produced to us today, most for the first time.

9 MS. PETERSEN: Is it 75 or 76? 'Cause on the  
10 tab it says 003375.

11 MR. JONES: I know I said 70- -- let me start  
12 over.

13 Q. (By Mr. Jones) This is found at DaVita  
14 003376, part of around 7,800 documents that were  
15 provided to us today, some for the first time.

16 MR. JONES: Scroll back down, Christina.

17 Q. (By Mr. Jones) Now, this is Abigail  
18 Fontanilla, March 16, 2020. And have you seen this  
19 email before, sir?

20 A. I -- I would have reviewed them. I can't say  
21 I specifically recall this one, though, sir.

22 Q. Let me read it to you. "I was scrolling  
23 through our Teammate Handbook and came up with a  
24 question. Governor of Virginia, Mr. Ralph Northam and  
25 our president Mr. Donald Trump have declared, quote,

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1 unquote, a state of emergency last week.

2 "In Section 4 of Pay Practices, it states that  
3 'if a designated facility is open during the emergency  
4 time frame, teammates who report to their location and  
5 work their scheduled hours will be paid premium pay for  
6 all hours worked.

7 Unless state law requires otherwise, premium  
8 pay will be one and one half times the teammates base  
9 rate of pay,' close quotes. Does it not apply to our  
10 situation right now? Specially with all other kinds of  
11 clinics and businesses are closed due to COVID 19."

12 Did I read that correctly?

13 A. You did.

14 Q. Now, here's a question from Mr. Abegail  
15 Fontanilla. And if you read it as a thinking person, it  
16 appears that Abegail, clinical administrative assistant/  
17 patient care technician for DaVita, has read the pay  
18 practices for non-exempt teammates -- that paragraph  
19 that we went over before we took the break.

20 Apparently, she read it the same way I did.

21 Is that how you read this email?

22 MS. PETERSEN: Objection. Calls for  
23 speculation.

24 A. Mr. Jones, I read this as a question that we  
25 would typically get for clarification.

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1 Q. (By Mr. Jones) Okay. But she says, "Does it  
2 not apply to our situation right now?"

3 As a thinking person, does that lead you to  
4 believe that perhaps she thinks that it does apply to  
5 our situation right now?

6 A. I -- I think she's got a question about it,  
7 yes.

8 Q. Yeah. And so -- and she's obviously read the  
9 same section of the pay practices for non-exempt  
10 teammates of the DaVita Disaster Relief Policy that I  
11 read, right?

12 A. Yes, I -- based on the language she's using  
13 here, it looks like she looked at that policy, yes.

14 MR. JONES: Christina, let's go to 003375 and  
15 scroll all the way to the bottom. There you go. At the  
16 bottom, we have now Ms. Lindsay Burns on March 18, 2020,  
17 to Jeremy Eaves -- that's you, Mr. Eaves -- "Subject:  
18 FW" -- I guess that's forward -- "Compensation."

19 "Hey Jeremy, this is an example where TMs are  
20 referencing an emergency situation. We explained that  
21 we are not paying hazard pay but this may be where  
22 confusion is coming from." Do you remember receiving  
23 this email, Mr. Eaves?

24 A. I -- I do -- I do remember I -- I saw this  
25 email.

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1 Q. Did you see this email when it came in?  
2 A. From Lindsay, yes, I did. And I --  
3 Q. Who is Lindsay Burns?  
4 A. Lindsay is a director on our operations  
5 innovation team. And she was set up to run the help  
6 desk for the influx of questions we have related to the  
7 COVID-19 pandemic.

8 Q. Okay. She sent this to you as an example,  
9 where TMs -- that stands for teammates -- are  
10 referencing an emergency situation and may be where the  
11 confusion is coming from.

12 Is that what you thought, when you saw her  
13 email?

14 A. That's what I read, yes. That's what I  
15 thought at the time.

16 Q. So then you write back to her about 29 minutes  
17 later. You say, "Ah, I see. Okay. Quote, the Disaster  
18 Relief Policy provides for pay continuance during an  
19 emergency time frame when a declared emergency or  
20 natural disaster prevents teammates from performing  
21 their regular duties, close quotes."

22 "Pay practice for non-exempt TMs as defined in  
23 the pay practices policy." And these are all caps.  
24 "Facility closed. Facility opens late or closes early.  
25 Facility remains open but teammates not able to come

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1 into work (e.g." -- meaning, for example -- "roads  
2 blocked, gas shortages). Teammates not able to work --  
3 use PTO, and approved by supervisor. Teammates able to  
4 make it in and get to the facility are paid at 1.5 or as  
5 defined by state law.

6 "With this pandemic, teammates are not  
7 disrupted in their abilities to perform their regular  
8 duties. All facilities remain open (you may get  
9 pushback that we closed the CBOs -- but that is not the  
10 case -- those offices remain open and we are encouraging  
11 TMs to work from home). I hope that helps. J."

12 Did you write those words, sir?

13 A. Yes.

14 Q. Now, I want to take you to the pay practices  
15 for non-exempt TMs as defined in the pay practices  
16 policy. And the two bullet points that are indented,  
17 the first says, "Teammates not able to work -- use PTO,  
18 and approved by supervisor."

19 Was that the policy, when you wrote this?

20 A. Yes.

21 Q. "Teammates able to make it in and get to the  
22 facility are paid 1.5 or as defined by state law." Was  
23 that the policy, when you wrote this?

24 A. Yes.

25 Q. Now, in this she writes, "Okay. Thank you. I

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1 Q. Well, the teammates -- were there any  
2 teammates within DaVita's 57,000 plus who were unable to  
3 perform their normal job duties in March 2020 because of  
4 the COVID-19 crisis?

5 A. Sure, if they were sick and unable to come in  
6 to work. But there was nothing for an able person who  
7 needed to come in, that would prevent them from  
8 performing their -- their normal course of duties.

9 Q. Were you aware that Ms. Prockish said that the  
10 COVID-19 prevented her from keeping her regular office  
11 hours, which were part of her regular duties? Were you  
12 aware of that?

13 MS. PETERSEN: Objection. Misstates prior  
14 testimony.

15 Q. (By Mr. Jones) Are you --

16 A. I'm not aware of -- of that comment.

17 Q. I mean, surely you're aware that there were  
18 people who -- was there anybody --  
19 Was there anyone within the DaVita teammates  
20 that didn't come to work during the early stages --  
21 let's say, March of 2020 -- because they felt that they  
22 were -- that they needed to shelter in place?

23 A. I -- I do believe that there were questions  
24 about that, yes. I -- I think it's possible teammates  
25 may have been confused and not have come in.

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1 Q. What do you mean "confused"? I mean, if  
2 they're told to shelter in place, why would they be  
3 confused?

4 A. Yeah, it was -- it was a fluid situation. And  
5 so I think there were reactions to -- "Oh, my gosh.  
6 We've been told to stay at home." The clarity around  
7 that was there were waivers for health care workers to  
8 come in, so that they could continue to treat sick  
9 patients.

10 Q. Not all teammates are health care workers, are  
11 they?

12 A. Our -- other teammates would have been still  
13 able to come in, if they were not providing direct --

14 Q. You didn't answer my question. You're  
15 answering a question you think --

16 A. Can you repeat --

17 Q. -- I'm going to ask. I'll be happy to.

18 Not all DaVita teammates are health care  
19 workers?

20 A. Correct. They're not health care workers, not  
21 all of them.

22 Q. And by the end of March 2020, most of DaVita's  
23 business offices were closed, weren't they?

24 A. That is not the case.

25 Q. No? Were some of them closed?

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1     emergency or natural disaster. And of course there's  
2     the predicate, you know, the emergency time frame is  
3     declared.

4                 If the facility is closed, the teammate can't  
5     work, they get regular time; true?

6     A.     Mm-hmm.

7     Q.     If the facility opens late or closes early,  
8     the teammate shows up and works those changed hours,  
9     they get regular time; right?

10    A.     Yes.

11    Q.     If the teammate's not able to -- if the  
12    facility is open and the teammate can't make it in to  
13    work, they don't get paid at all. They've got to use  
14    PTO, or they don't get paid; right?

15    A.     (No response.)

16    Q.     Yes?

17    A.     Yes.

18    Q.     But if the facility is open and the teammate  
19    makes it into the facility, works their scheduled hours,  
20    they get premium time; right?

21    A.     Mm-hmm, yes.

22    Q.     Okay. Why did DaVita pay premium time only to  
23    the teammates who are able to make it into the facility  
24    that's open and work their scheduled hours?

25    A.     I -- I -- I understand your question. It --

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1 it's insensitive -- I mean, it -- it's above and beyond  
2 insensitive to say, "Listen, we realize that it is extra  
3 tough for you to potentially get in here and -- and we  
4 need you here." And so for us to have some additional  
5 incentive to motivate those teammates to come in is  
6 important.

7 And so during those situations -- where  
8 there's this disaster, they're not performing their  
9 regular job duties, it's difficult for them to get in --  
10 we want to have that additional incentive there to say,  
11 "Hey, we got that additional half time on top of what we  
12 would normally pay you for the time to come in."

13 Q. Okay. But, see, that's what I'm getting at.  
14 You know, that's what I just don't understand where  
15 you -- where you're getting that from.

16 So the policy of DaVita is that if teammates  
17 are able to make it into the facility that is open and  
18 work their scheduled hours, they do not get premium pay  
19 unless they're unable to perform their regular duties.

20 Is that your testimony?

21 A. Sorry. Can you repeat the question?

22 MR. JONES: Read it again, Madam Court  
23 Reporter, please.

24 (Record as shown on page 173, lines 13 through  
25 20, read back.)

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1 reason for suspending the deposition is with regard to a  
2 privilege log, we do want to make note that there's not  
3 been a single privilege objection throughout this entire  
4 deposition. It's a spurious reason for suspending the  
5 deposition. And we object to any form of continuation,  
6 and I consider it closed. So with that, we'll close out  
7 the record.

8 THE COURT REPORTER: Would the witness like to  
9 waive or reserve signature?

10 MS. PETERSEN: We will reserve.

11 (Deposition concluded at 6:45 p.m.)

12 (Signature reserved.)

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S I G N A T U R E

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5                   I declare under penalty of perjury  
6       under the laws of the State of Washington that I have  
7       read my within deposition and the same is true and  
8       accurate, save and except for changes and/or  
9       corrections, if any, as indicated by me on the CHANGE  
10      SHEET page hereof.

11                  Signed in \_\_\_\_\_,  
12       Washington, on the \_\_\_\_\_ day of \_\_\_\_\_,  
13       2021.

14

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\_\_\_\_\_  
18                  JEREMY MICHAEL EAVES  
19                  TAKEN: May 10, 2021

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25       Olivia Pennella

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1

## C E R T I F I C A T E

2 STATE OF WASHINGTON )  
3 COUNTY OF KING ) ss.  
4

5 I, the undersigned Washington Certified Court  
6 Reporter, hereby certify that the foregoing deposition  
7 upon oral examination of JEREMY MICHAEL EAVES conducted  
via Zoom was taken stenographically before me on May 10,  
2021, and transcribed under my direction;

8 That the witness was duly sworn by me pursuant  
9 to RCW 5.28.010 to testify truthfully; that the  
transcript of the deposition is a full, true, and  
correct transcript to the best of my ability; that I am  
neither attorney for nor a relative or employee of any  
of the parties to the action or any attorney or counsel  
employed by the parties hereto nor financially  
interested in its outcome.

12

I further certify that in accordance with  
Washington Court Rule 30(e), the witness is given the  
opportunity to examine, read, and sign the deposition  
within thirty days upon its completion and submission  
unless waiver of signature was indicated in the record.

15

IN WITNESS WHEREOF, I have hereunto set my  
hand this 17th day of May, 2021.

17

18

\S\OLIVIA PENNELLA

19

20

Washington Certified Court Reporter No. 3337  
License expires June 4, 2022.

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